

CANADA / JUDGMENT

R. v. Latimer

2020 BCSC 2183

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2020 BCSC 2183 R. v. Latimer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Latimer,

2020 BCSC 2183

Date: 20201218

Docket: 27798

Registry: Vancouver

Regina

v.

Kyle Latimer

Craig Latimer

Jacob Pereira

Anduele Pikientio

Csongor Szucs

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Before: The Honourable Madam Justice Ker

Oral Ruling on Applications #61 and #62

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Place and Date of Hearing:

Vancouver, B.C.

November 30, 2020

December 1-3, 10, 11, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 18, 2020

[1] This Ruling was delivered as oral reasons. It has since been edited for distribution.

Introduction

- [2] Craig Latimer and Csongor Szucs have filed separate but related applications seeking disclosure orders in the context of their ongoing prosecution for offences related to drug trafficking, conspiracy, criminal organization and weapons offences. This is the third disclosure ruling I have made in respect of Indictment #27798 (the "Latimer Indictment").
- [3] The first ruling is indexed at 2020 BCSC 697, (the "Laporte List Ruling"), and was delivered on February 20, 2020. The second ruling is indexed at 2020 BCSC 1517 (the "Disclosure Deadlines Ruling"), and was delivered on September 14, 2020.
- [4] Given the exigencies of the matter, this ruling will not address all of the numerous factual intricacies of the current disclosure application that counsel reviewed in painstaking detail, both in the evidentiary portion of the voir dire as well as in the submissions of counsel at the conclusion of the voir dire.
- [5] Suffice to say, I have considered the evidence of Detective Constable Lisa Wu, ("DC Wu"), the exhibits filed, and the submissions of counsel.

- [6] On these two applications, #61 and #62, Mr. Szucs seeks two orders related to Stinchcombe disclosure, and both Mr. Szucs and Mr. Latimer seek a Laporte list from the Crown in respect of emails that the Crown has determined it will not disclose, as the items are considered to be "clearly irrelevant".
- [7] The Crown opposes both applications and urges the court to dismiss them. The Crown argues that more particularized disclosure requests and a cooperative approach outside of the court process should be sufficient, instead of requiring Laporte lists.
- [8] In respect of the Stinchcombe application brought by Mr. Szucs regarding the Project Territory emails, the Crown argues it has disclosed everything that is not clearly irrelevant, save for what may have been accidentally missed in this mammoth email review process that was precipitated by the Laporte List Ruling.

Factual Background

- [9] The two previous disclosure rulings I have issued inform this ruling and I incorporate the totality of both the Laporte List Ruling and the Disclosure Deadlines Ruling into this ruling, without the need to repeat them. Accordingly, both rulings form part of this ruling.
- [10] When the Disclosure Deadlines Ruling was made, there were three accused left on the Latimer Indictment. There are now only two accused left on the Latimer Indictment, Craig Latimer and Csongor Szucs. Kyle Latimer entered guilty pleas to Counts 1, 3, 5 and 9 on the indictment on December 15, 2020, and will be sentenced by Associate Chief Justice Holmes in the new year.
- [11] Craig Latimer and Csongor Szucs are both in custody on this indictment. Mr. Latimer is detained. Mr. Szucs has, thus far, consented to remain in custody on these charges since he completed a federal sentence of imprisonment on other charges sometime in the late summer of 2020.
- [12] The arrests on this indictment occurred on August 7 and 8, 2018. The Jordan deadline on this file is rapidly approaching as approximately February 6, 2021. Disclosure has been an ongoing challenge in respect of a particular aspect of the Project Territory file--the emails of all of the investigators and civilian assistants. As the Laporte List Ruling makes plain, for whatever reason, the hundreds of members of Project Territory were told during the course of the investigation to only forward emails of "investigative significance" to the Project Tourniquet mailbox. The members of Project Territory were left to their own devices to determine what was of investigative significance.
- [13] The inevitable result of such an amorphous direction was that many email communications, both within the Project and between officers and witnesses, were never forwarded to the Project Tourniquet mailbox and therefore were not entered into the data set for assessment by the File Coordination ("FC") team of the command triangle.

- [14] DC Wu was reluctant to concede that leaving it to the author of an email to determine the investigative significance of an email--also explained as relevant to the police investigation--created problems. However, her explanation of the assessment of relevance, and assessment by the author at the time when the action was taken, underscores the difficulty of leaving it to individual investigators to determine which emails should be forwarded.
- [15] An investigator may well only be involved in a portion of the investigation and not appreciate how their involvement or actions impact on the overall investigation. Indeed, an action taken and described in an email may well be insignificant at the time, but take on greater significance and relevance later, when the whole picture or more of the picture is known. The lack of documentation of the email that may contain investigative steps then becomes problematic; hence the need for all officers to forward all emails to a central repository for sifting later.
- [16] Several examples that follow serve to illustrate the inevitable difficulties that such a course of conduct has generated. These examples come both from two previously conducted substantive voir dres and from the voir dire that has precipitated this ruling.
1. Missing Brighthouse Pacific Rim Materials
 - [17] In the Brighthouse and Pacific Rim voir dire, the ruling found at 2020 BCSC 448 (the "Brighthouse Ruling"), it was established that DC Unheim did not keep or could not find her initial email request sent to the concierge at the Pacific Rim Residences seeking permission to review CCTV footage and fob access records, essentially her lawful authority request for materials: Brighthouse Ruling at paras. 62, 96, 221. The email review has not located this item.
 2. Kwantlen/West Georgia Voir Dire Late Disclosure
 - [18] In the Kwantlen and West Georgia voir dire ruling, found at 2020 BCSC 1695 (the "Kwantlen Ruling"), disclosure of materials and emails was occurring either on the eve of the commencement of the voir dire or as the voir dire was being conducted. Most notably, a civilian witness, Ms. Blair, the concierge at the West Georgia complex, had emailed a statement to Constable Prince Opoku in August 2018. However, her statement was not disclosed to defence counsel until July 17, 2020, just days before the witness was about to commence her evidence on the voir dire.
 3. Emails Pertaining to the Brighthouse Voir Dire Disclosed After Reasons Had Been Issued
 - [19] As a result of the email review ordered in the Laporte List Ruling, emails exchanged on May 5, 2017, between a concierge at the Brighthouse location and DC Nielsen, the officer assigned to the obtain the CCTV footage and fob access records for that location, were only recently disclosed to defence counsel in disclosure set V-18 issued September 2, 2020. This was more than six months after the voir dire concluded and I had ruled on the matter.

[20] The content of those emails, the court was advised in submissions, would have conclusively established that the concierge at the Brighthouse location was providing materials to DC Nielsen prior to him obtaining authorization to do so from the strata property manager. Moreover, had the emails with the attached materials been disclosed in advance of the voir dire, or even during the voir dire, they would have established that DC Nielsen was wrong in his belief that he did not receive materials prior to the concierge being authorized by the strata property manager to provide them to him.

4. DC Nielsen's Emails Missed in the Email Review

[21] I made a clear order in the Laporte List Ruling that:

[93] In so far as the emails and electronic communications are concerned, if this has not been done already, I am directing that DC Wu communicate with all officers and civilians involved in Projects Territory and Tantrum and request they forward to her immediately any emails and/or electronic communications in which they communicated about any matter or target related to Project Territory or Tantrum. The Crown can then assist DC Wu and the file coordinators in assessing the materials for clear irrelevance or privilege and develop a standard for disclosure of the materials that should be disclosed.

Notwithstanding this order and DC Wu's request that all emails be forwarded to her, counsel learned and the court was advised on or about December 3, 2020, that DC Nielsen, the affiant on a number of prior judicial authorizations for tracking warrants and production orders, never provided DC Wu with his sent emails as requested. No explanation has been provided for how or why DC Nielsen failed to provide his sent emails. DC Wu and the Crown are now working on obtaining them.

[22] I realize managing disclosure on a large investigative file such as Project Territory is a challenging and daunting task, and that it is a human endeavour which inevitably will uncover mistakes. However, the fact that DC Nielsen's sent emails had not been provided consistent with the order that I made on February 20, 2020, and that the failure was not discovered until December 2 or 3, 2020, does not instill much confidence in the court that the VPD, and Project Territory in particular, either understand the Stinchcombe framework or take their disclosure obligations in so far as these emails are concerned seriously.

[23] I wish to be clear. I have no doubt that Crown counsel and DC Wu have engaged in Herculean efforts, working feverishly on the email disclosure task since I made my order on February 20, 2020, and that Crown counsel understands its disclosure obligations under Stinchcombe. DC Wu, I believe, understands her disclosure obligations, but is likely overwhelmed with the monumental task that was placed on her shoulders on February 20, 2020, there being over 400 investigators and civilian members to contact and obtain emails from.

- [24] Regrettably, for reasons unbeknownst to the court, the VPD did not see fit to add any officers to the task of assisting DC Wu to manage the email review that came out of the Laporte List Ruling until September 2020 when DC Bermenchuk was assigned to assist in the email review, over six months after the Laporte List Ruling was delivered.
- [25] Moreover, the IT Department of the VPD was not enlisted to assist in the task of locating sent or received emails or deleted emails, save for those officers from an outside police force (for example, the Richmond RCMP) seconded to Project Territory. Officers from other agencies seconded to Project Territory were given a VPD email address. As the seconded officers have returned to their base agencies, they no longer have access to their VPD email accounts. Accordingly, VPD's IT Department assisted to gather the emails from the seconded officers' archived emails. The same approach was not applied to the Project Territory investigators who are VPD members. Rather, they were contacted and directed to forward their sent and inbox emails as well as archived emails to DC Wu.

5. Sergeant Byrne's Emails

- [26] Sergeant Lisa Byrne, a member of the Project Territory command triangle, was an active user of the Project Tourniquet mailbox, c.c.'ing emails to herself and also forwarding them to the mailbox. Her email spreadsheet outlines approximately 400 emails she sent to herself between July 13, 2017, and August 9, 2018, the day after the takedown arrests in this investigation.
- [27] DC Wu advised in her evidence that Sgt. Byrne has deleted most of her emails. Although some of the emails she sent in respect of a topic that formed part of an email chain do not appear in her withheld emails spreadsheet, the last one in the chain does--for example Exhibit #1, Tab 26, and Exhibit #1, Tab 3 (page 2 of 18), with respect to document #13114. However, the chain of communication and participants is not entirely clear. Fortunately, this particular instance has a Document ID number to cross-reference the reader to locate the alleged duplicate document.

6. V4-Duplicate Designation on the Spreadsheets

- [28] This brings me to a sixth point. Many of the descriptors for "clearly irrelevant" emails on the spreadsheets are simply listed as "V4-Duplicate". As I understood DC Wu's evidence, V4 is the designation for clearly irrelevant material. She then further assigned the identifier "Duplicate", to indicate the information in the email in question was found in another email chain. Significantly, this did not mean that the email chain had been disclosed.
- [29] DC Wu agreed that if there was no Document ID number included with a V4-Duplicate designation, there was no way for counsel to determine if the email chain had been disclosed and the designation would not assist counsel in trying to track down the email chain.

- [30] Complicating the "Duplicate" designation for some emails is the fact that a computer program was used to determine whether the content of an email was duplicative of another email. The emails that the computer program determined were duplicate were not reviewed by DC Wu or the two investigative analysts assisting in the email review.
7. V4-Admin Designation on the Spreadsheet
- [31] Another V4 designation that DC Wu applied was "V4-Admin". Admin was intended to reflect truly administrative actions, such as issues of overtime, finances, and distribution lists. Defence counsel acknowledge that information of this sort is clearly irrelevant and does not need to be disclosed.
- [32] The flaw with this designation, however, became readily apparent in DC Wu's evidence. Since February 20, 2019, counsel for Craig Latimer has been seeking disclosure of the document referred to as the FSOC 6 Bulletin, that was created on February 14, 2017 (Exhibit #7). The FSOC document was clearly distributed between members of the command triangle (DC Hyde, Sgt. Byrne), one of the affiants (DC Nielsen), and another officer (Jaswal Rajan), on both May 5, 2017 (Exhibit #4), and May 10, 2017 (Exhibit #5, 6). It appears defence counsel learned of the document through Sgt. Byrne's handwritten notes.
- [33] The FSOC document is of significance to Craig Latimer's known versus unknown Chesson argument in respect of the Part VI authorization granted in February 2018, and the failure to name him as a known target. An excerpt from Sgt. Byrne's spreadsheet of emails received does not capture this document being shared, nor her sending it with her comments to DC Hyde (Exhibit #8). Nor does DC Nielsen's emails spreadsheet (Exhibit #10).
- [34] DC Hyde's email spreadsheet shows that he forwarded the FSOC bulletin to himself on May 5, 2017, but his email is categorized as V4-Admin, because it was simply forwarding an attachment. Notably, the subject line of the email does not assist the reader in determining its subject matter, as the subject line of the email is simply "FW: RTIC", RTIC being the acronym for the Real Time Intelligence Centre. The confusion is compounded further: the same attachment was shared between DC Hyde and Sgt. Byrne on May 10, 2017, with a different subject line, this time "FSOC - Group 6 Latimer et al". On Sgt. Byrne's spreadsheet the email is labelled as V4-Admin with a Document ID number. However, on DC Hyde's spreadsheet it is labelled as Duplicate.
- [35] The FSOC document pertains to knowledge about the Latimer group in the context of another investigation and includes reference to Craig Latimer's address and date of birth, but contains no photograph of him. DC Wu classified the emails between the officers as V4-Admin because it simply related to the sharing and forwarding of an attachment, notwithstanding the fact that the body of the emails between DC Hyde and Sgt. Byrne shared information--an electronic conversation--that pertained to the FSOC bulletin and the targets of the Project Territory investigation.

- [36] DC Hyde's spreadsheet of withheld emails was included in disclosure set V-19 provided on October 2, 2020, and Sgt. Byrne's withheld emails spreadsheet was included in disclosure set V-20 provided on November 2, 2020 (Exhibit #3).
- [37] DC Wu conceded that she understood only in broad strokes that Craig Latimer was going to argue that he ought to have been named in the Part VI. She agreed that, in looking at the emails in relation to the FSOC bulletin, her initial assessment was they were not relevant to the evidence of the police investigation. She fairly acknowledged that when viewed through a different lens, the lens of Mr. Latimer's concerns about who knew about him when in the investigation, then the emails had potential value to the defence.
- [38] To finish out the concerns with the FSOC bulletin and the defence's persistent requests for it, and what this illustrates in terms of the problems with the email review and spreadsheet classification for withheld emails, I will refer briefly to what Exhibit #14 establishes.
- [39] Exhibit #14 is a collection of approximately 32 letters between Mr. Latimer's counsel and the Crown, spanning the time frame of February 20, 2019, to November 23, 2020. At the outset, the Crown took the position that the FSOC document had nothing to do with the Project Territory investigation (Exhibit #14, February 27, 2019 letter from Crown). The correspondence between the parties culminated with a letter from Crown counsel to defence counsel on November 23, 2020, that indicates the Crown is prepared to disclose (and did disclose) the emails related to the FSOC bulletin. It is unclear to me where in the chain of communications between the parties that the actual FSOC bulletin was disclosed, but the point of this summary is that it was not until November 23, 2020, that the defence was able to obtain the email communications around the FSOC document.
- [40] While I commend the Crown for finally getting to the bottom of this, the protracted process to get to disclosure of these communications underscores the difficulties created by how the emails were initially handled by Project Territory and the monumental problem it has created for DC Wu, the Crown and the defence in trying to piece this component of the investigative file together.
8. V4-Work Product Designation on the Spreadsheets
- [41] Similar difficulties abound with the V4-Work Product label DC Wu applied to some emails that have not been disclosed and were labelled as clearly irrelevant. DC Wu explained that emails labelled V4-Work Product were not disclosed as they are emails between investigators in the back-and-forth about a particular task. She explained that, as the emails were written up in the Task Action Report ("TAR"), the immediate summary of actions in the emails was clearly irrelevant.
- [42] DC Wu agreed with defence counsel that there was no way for the defence to determine whether the content of an email labelled as V4-Work Product has been disclosed in the disclosure sets.

- [43] An example of "work product" emails would be the daily pertinent line sheets DC Wu, as the wire room officer, sent out to members of Project Territory. In her TAR that commenced on February 1, 2018, and concluded on November 13, 2018, DC Wu lists the 12 officers and two information analysts to whom she forwarded the daily pertinent line sheets, in respect of the overheard wiretap communications. The TAR establishes that she sent approximately 190 emails in this time frame. The TAR documents the dates and times of the emails, but fails to include any reference to whether there was any communication or information within the body of the email or whether the email simply consisted of an attachment of the pertinent line sheet for that day.
- [44] To add to the confusion is the fact that, in her evidence, DC Wu described the content of these emails as work product, but DC Nielsen's email spreadsheet had such emails labelled as V4-Duplicate. Respectfully, whether the content of the email is duplicate or work product, I would have expected that email communications about the daily state of what the wiretaps were disclosing would be characterized as communications and information that pertain to the state of the investigation and provide snapshots on a daily basis as to how the investigation was being moved forward.
- [45] While DC Nielsen's email spreadsheet excerpt in Exhibit #1 at least shows him receiving the daily pertinent line sheet emails, Sgt. Byrne's email spreadsheet does not have any references to the daily pertinent line sheets (Exhibit #1, Tab 3). No doubt this is due to the fact that she deleted her emails prior to the Laporte List Ruling and so was unable to forward emails from her email inbox, sent box or archived emails.

9. Generic Subject Lines in the Emails

- [46] Another area I will briefly review from the evidence is the complete inability to discern what some of the withheld emails enumerated in the spreadsheets are actually about. Some of the email subject lines are simply shown in the spreadsheets as:
- (1) Blank, indicating no subject line in the email;
 - (2) "RE," indicating a reply to a blank subject line email; or
 - (3) "FW," indicating the forwarding of a blank subject line email.
- [47] Crown counsel has acknowledged that these subject descriptions do not provide sufficient information for the defence to determine if the contents of the email are something they might seek to challenge on a Stinchcombe review as not clearly irrelevant and therefore subject to disclosure. The Crown intends to review these items in a staged approach to provide further information to the defence. As I understood the submissions, the re-review of the email subject lines will be prioritized according to the subject matter of the upcoming voir dire, with the Chesson voir dire, set to commence January 11, 2021, being the most immediate priority.

10. Emails About Access to Buildings

- [48] A further area of confusion pertained to email chains related to obtaining access to two buildings, one on Kingsway (Exhibit #1, Tab 18), and one on Beatty Street (Exhibit #1, Tab 19), and what information was provided to the concierges of these buildings to facilitate gaining access and materials, such as Form Ks and fob records.
- [49] Cross-examination of DC Wu established that, with respect to Cst. Graham's and DC Hill's email exchange on these topics, the V4-Duplicate label applied in the spreadsheets does not account for all emails in the chain. Moreover, the document identifiers provided with the emails do not assist in determining the content of the emails or the basis for withholding the email.
- [50] One example will suffice. Officer Graham was tasked with investigating a potential stash house or residence associated to Project targets located on Kingsway Avenue. In his TAR (Exhibit #1, Tab 23), Cst. Graham indicates he emailed the concierges of the building seeking Form K information and other materials. Nowhere in the TAR is there reference to Cst. Graham's difficulties with cajoling the concierges to cooperate. However, in a different set of emails between Cst. Graham and DC Hill, labelled "access to buildings", there is a discussion about how to obtain the concierges' cooperation. One set of emails relates to the building on Kingsway, the other to the building on Beatty Street. There is no cross-reference to the email communications between Cst. Graham and the concierges.
- [51] Taking the Kingsway Avenue location as an example of further confusion in the withheld emails spreadsheets, one email for Cst. Graham (Exhibit #1, Tab 21) is listed as V4-Duplicate, with a reference to a document ID number and is 9 KB in size. Another email on the same date with "FW" in front of the subject line is described as V4-Work Product and 364 KB in size, and a further email with a "RE" before the subject line is described as V4-Admin and is 17 KB in size.
- [52] Five other emails with the same subject line and date with "RE" preceding the subject line do not let the reader determine who the replies are between, who the sender is, and, for the emails listed as "Duplicate", where it has been disclosed elsewhere. All of these emails tie back to document ID #130964, which is an email chain about the location on Kingsway.
- [53] The actual document #130964 is included in Exhibit #1 at Tab 20. The email chain of that document ends with Cst. Graham's email to the Tourniquet mailbox on March 2, 2018. It is shown as a forwarded email. However, an examination of Cst. Graham's withheld email spreadsheet does not list a "FW" email about the Kingsway location on March 2, 2018. Instead, a "RE" email about the location is listed and labelled V4-Duplicate, without a document number.

[54] Accordingly, defence counsel's examination on this particular area of the withheld emails spreadsheets establishes that, frequently, the V4-Duplicate label fails to account for all email communications on the topic. It also demonstrates that the identified documents associated with an email do not assist in determining the contents of the email or the basis for the withholding of the email.

11. Szucs/Pereira Emails

[55] Another example of the difficulties with the withheld emails spreadsheets was established by reference to a series of emails with a subject line marked "Szucs/Pereira." On DC Nielsen's email spreadsheet (Exhibit #1, Tab 2), it shows he received two emails, one from DC Wu and one from DC Unheim, both on the same date, March 16, 2018. The two emails differ in size and they are labelled V4-Duplicate. From this entry, DC Wu conceded that defence counsel could not discern who sent the original email, who was involved in the reply, whether the email was part of a chain, or whether it might be on another officer's spreadsheet.

[56] Turning to DC Davies' email spreadsheet (Exhibit #1, Tab 13), it became apparent that DC Nielsen sent an originating email bearing the subject line "Szucs/Pereira" on March 16, 2018, that DC Davies received. This entry is labelled as Duplicate, but provides no reference to where the information is duplicated. Farther down on DC Davies' email spreadsheet, there is an email from DC Unheim with the same subject line, dated March 16, 2018, but labelled V4-Tasking.

[57] An examination of DC Aparcar's email spreadsheet (Exhibit #1, Tab 14), shows that she received an email from DC Unheim with a subject line "FW: Szucs/Pereira" on March 16, 2018, and this time it is labelled as withheld because it is V4-Work Product.

[58] Collectively, it is impossible to discern whether all of these emails are part of the same chain, although that might be a fair inference given they were all sent on the same date. The only thing that can be said is that they all have the same subject line and date. DC Wu was unable to say whose work product this related to, whether more than one officer was involved in the communications, whether the content of the email related to imparting information about the investigation, or where it might be located in the disclosure.

[59] This area of cross-examination by defence counsel was summed up by DC Wu agreeing, having been taken through the spreadsheets of five or six different officers, that determining where the emails were duplicated and why they were withheld turned into an impossible task.

12. The Emails of Superintendent Porteous

[60] The final area to refer to from the evidence is the revelation in DC Wu's evidence that Superintendent Porteous, who oversaw the investigation ostensibly on an administrative basis, was never asked to forward all of his emails during the email review. The reason he was not asked to provide his emails was threefold:

- (1) He is now retired;
 - (2) He only oversaw the investigation on an administrative basis; and
 - (3) He was not on the witness list and only officers on the witness list were asked to send their emails to DC Wu.
- [61] A set of emails in Exhibit #1 at Tab 26 involves a merged chain of emails that starts out with DC Hyde sending an email on April 28, 2017, to Sgt. Byrne. The subject line is "Project Tourniquet - 30-Day Report". Two minutes later, Sgt. Byrne forwarded DC Hyde's email to Superintendent Porteous. On April 30, 2017, Superintendent Porteous forwarded the "Project Tourniquet - 30-Day Report" email to himself and Sgt. Byrne, but the body of the email text is redacted as V4.
- [62] Next in this email chain is an email from Sgt. Byrne to Superintendent Porteous on May 4, 2017. Significantly, however, the subject line has changed and it is now, "Protected C - Port's Eyes Only." This email is lengthy and begins with the following sentence: "Hey, I figured I'd better just give you typed answers and we can talk more if you require." This would appear, possibly, to relate to Superintendent Porteous' email of April 30, 2017, which is entirely redacted. One might surmise that he had a series of questions for Sgt. Byrne in that email-- or perhaps not. It is impossible to tell.
- [63] Sgt. Byrne's email of May 4, 2017, contains information relevant to the Project Territory investigations and the investigative steps that were being planned. It is unknown if Superintendent Porteous responded or provided input on the investigative steps or direction of the investigation. The final email in the chain is Sergeant Byrne's forwarding email, sending the email chain to the Project Tourniquet mailbox on August 2, 2017.
- [64] Obviously from this email chain, Superintendent Porteous was involved in receiving information about investigative steps undertaken on Project Territory. What is missing from the complete picture is whether he participated in the email conversations, provided directions or offered advice on investigative steps for Project Territory, as no effort has been made to obtain his emails, because he is now retired and is not on the witness list.
- [65] This last topic of examination by defence counsel, the Sgt. Byrne/Superintendent Porteous email gap, demonstrates that the withheld email spreadsheets are likely incomplete, as they do not appear to account for all communications sent and received by all of the officers involved in the Project Territory investigation.

Governing Legal Principles

- [66] The governing legal principles for this application are not seriously in issue. My review of them is contained in the Laporte List Ruling at paras. 55-74, and they inform my analysis of the current application.

[67] Importantly, disclosure does not exist for its own sake. Rather, it exists in support of an accused's right to make full answer and defence which "is one of the pillars of criminal justice upon which we heavily depend to ensure that the innocent are not convicted": *R. v. Stinchcombe*, [1991] 2 S.C.R. 326 at 336.

[68] As the Ontario Court of Appeal noted in *R. v. Horan*, 2008 ONCA 589 at para. 26:

Since *Stinchcombe*, there have been many decisions from courts of all levels respecting the Crown's disclosure obligations. This process has not been without its problems and controversies. This case is not the opportunity to attempt to rationalize all those decisions. But, it seems to me that when a court is faced with an allegation of non-disclosure especially where the allegation comes up in the middle of the trial and threatens to derail the proceedings, it would be helpful to bear in mind the purposes identified by Sopinka J. in *Stinchcombe*. Put simply, disclosure is a means to an end. Full prosecution disclosure is to ensure that the accused receives a fair trial, that the accused has an adequate opportunity to respond to the prosecution case and that in the result the verdict is a reliable one. However, *Stinchcombe* has not completely overhauled the paradigm of the adversary process in which trials are dynamic and as events unfold, prosecution and defence may find that they have to respond quickly to changes in strategy and changes from the expected testimony of witnesses.

1. Entitlement to Disclosure

[69] The Crown has a broad duty to disclose all relevant evidence and information in its possession to persons charged with criminal offences: *Stinchcombe* at 336-340; *R. v. Quesnelle*, 2014 SCC 46 at para. 11. There is a corollary duty upon police investigators to disclose to the Crown all the relevant materials in their possession pertaining to the investigation of the accused: *R. v. McNeil*, 2009 SCC 3 at para. 23.

[70] The scope of the Crown's initial active obligation to disclose usually extends to the "fruits of the investigation." This generally describes the evidence gathered and actions undertaken by police in the course of investigating the crime being prosecuted. Where the defence is able to establish a basis for access to further material, the Crown is obligated to provide those materials in its possession that have been identified as possibly assisting with full answer and defence: *R. v. Chaplin*, [1995] 1 S.C.R. 727 at para. 30.

[71] The extended scope of the information to which the defence is entitled includes any material that bears a possibility of helping to meet the Crown's case, advance a defence, bring motions for pretrial relief, or influence a decision on how the defence should be conducted: *R. v. Egger*, [1993] 2 S.C.R. 451 at 467.

[72] Importantly, the bounds of disclosure are not defined by the Crown's theory of the case or the evidence it intends to lead at trial: *Egger* at 467; *Stinchcombe* at 343.

[73] The jurisprudence cited in the Laporte List Ruling makes it clear that relevance in the disclosure context must be broadly defined: *Laporte List Ruling* at paras. 61-66.

2. Limits on the Obligation to Disclose

- [74] The Crown's obligation to disclose is not absolute and the Crown is not obliged to disclose information which is clearly irrelevant, privileged, or if the disclosure is otherwise prohibited by law: McNeil at para. 18. It is also not obligated to indulge unsupported requests for further disclosure in order "to preclude speculative, fanciful, disruptive, unmeritorious, obstructive and time-consuming disclosure requests": Chaplin at para. 32.
- [75] The Crown's exercise of its disclosure obligation is discretionary and the Crown bears the burden of justifying any redaction or temporary withholding of information: Egger at 466. As Justice Sopinka stated in Stinchcombe at 340, "inasmuch disclosure of all relevant information is the general rule, the Crown must bring itself within an exception to that rule."

3. Defence Obligations in the Disclosure Process

- [76] In the Laporte List Ruling at paras. 67-74, I reviewed the decisions of Madam Justice Fisher, as she then was, in R. v. McKinnon, 2014 BCSC 2051 [McKinnon 2051], and R. v. McKinnon, 2014 BCSC 749, and noted the parallels between the McKinnon investigation and the Project Territory investigation.
- [77] In McKinnon it was discovered as the last Crown witness testified that thousands of emails for 13 investigating officers had not been disclosed. The trial was adjourned and a comprehensive audit review was conducted, as it was apparent that the emails were being used for a variety of purposes, including the exchange of information about investigative steps and at times acting as a form of notes. To be sure, many emails were clearly irrelevant as they did not trench on those areas. However, the fact of the matter remains that in McKinnon (a decision that precedes the inception of this investigation by approximately two-and-a-half years), as in this case, the withheld emails did contain information that was neither clearly irrelevant nor privileged and ought to have been disclosed.
- [78] The jurisprudence makes it clear that disclosure is a shield and not a sword, and so the defence has an obligation to actively participate in the process. Active participation of the defence in the disclosure process includes particularized requests for disclosure. That is the expectation, especially in large, complicated prosecutions like those in McKinnon, R. v. Pickton, and this case.

Analysis

- [79] The Crown resists the two Stinchcombe applications by Mr. Szucs by contending they have disclosed everything, save for what may have been missed through human error. In other words, they have disclosed all emails that are not clearly irrelevant or privileged. Crown also opposes the Laporte list applications brought by Mr. Szucs and Mr. Latimer, arguing that the withheld email spreadsheets serve in effect a Laporte list function, even if they are not a true Laporte list or a perfect Laporte list. Moreover, the Crown contends that counsel should provide particularized inquiries in respect of the withheld emails.

1. Stinchcombe Applications

[80] I will first address the Stinchcombe applications made by Mr. Szucs. The notice of application filed by counsel for Mr. Szucs seeks disclosure orders under the Stinchcombe regime in respect of the Project Territory emails as follows:

- (1) That the respondent disclose all emails, whether sent or received, by the officers and civilian members involved in the investigation; and
- (2) That the respondent disclose all emails labelled "Duplicate", "Work Product", "Tasking" or "Resourcing" which are not clearly irrelevant or privileged.

[81] Notwithstanding the difficulties that the evidence on this voir dire has disclosed, in my view a blanket request that all emails sent or received by the officers and civilian members involved in the investigation is far too wide, and amounts to seeking to use the disclosure process as a sword and not a shield.

[82] I decline to make the first order sought as it in effect would likely result in an avalanche dump of emails, many of which no doubt are clearly irrelevant or possibly privileged. As framed, it appears to be an effort to circumvent the Stinchcombe principles.

[83] In respect of the second order sought, however, the evidence in my view supports a partial granting of the order sought.

V4-Duplicate Emails

[84] DC Wu's evidence makes it apparent that the emails labelled "Duplicate" have somehow been disclosed elsewhere, or their content has been, but the defence is unable to determine from the withheld email spreadsheets where the duplicated material is located. As other emails or material have been disclosed elsewhere, it is axiomatic that the Stinchcombe threshold for disclosure has been met. Thus, simply because the emails may be duplicative of previously disclosed emails or materials does not make them clearly irrelevant. Moreover, as they are currently withheld it is impossible for the defence to determine the order of the chain of communications and exchange of information between the investigators.

[85] Accordingly, the Crown is to disclose all emails labelled V4-Duplicate listed on the withheld email spreadsheets.

V4-Work Product Emails

[86] In respect of the V4-Work Product emails the defence seeks to have disclosed, in my view the defence has established that emails labelled "work product" have not been transposed verbatim into the TARs that they purportedly relate to.

[87] As the examination on Cst. Graham's emails and the TAR in respect of his dealings with the Kingsway Avenue location reveal, the contents of the email chains were not actually included in the TAR. Without the actual email or email chains and the information

contained therein to provide the context of the information being shared between the investigators to obtain materials like CCTV footage and fob records, the defence is unable to ascertain the parameters and accuracy of the information provided to concierges when investigators sought CCTV footage and fob records for various stash houses and locations believed to be residential locations of the targets.

- [88] Similarly, the absence of the emails related to the provision of the daily line sheets raises questions about the content and context of the information being shared amongst investigators during the time that the Part VI was in place.
- [89] While it is clear that DC Nielsen, the affiant for subsequent judicial orders like tracking warrants, listened to the actual intercepts to inform himself of the contents of an ITO, in my view that is only one piece of the context of the movement of the investigation. It is also informed by the contents of the emails disseminating the daily line sheets and the inevitable communications amongst investigators about the meaning and impact of the materials in the daily line sheets. V4-Work Product appears to be a variation on V4-Duplicate. The TAR summaries of the emails on this point fail to capture the actual substance or content of the information of the emails exchanged in relation to these investigative steps.
- [90] Accordingly, the Crown is to disclose all emails labelled V4-Work Product on the withheld email spreadsheets.

V4-Tasking and V4-Resourcing Emails

- [91] Counsel for Mr. Szucs also seeks disclosure of all emails labelled V4-Tasking and V4-Resourcing. In my view, however, DC Wu's evidence was clear that the emails labelled V4-Tasking simply related to the assignment of an investigative task with a TAR attached for the investigator to complete. Similarly, V4-Resourcing related to emails that were circulated asking for members to assist on certain tasks, for example the execution of a search warrant.
- [92] The Crown acknowledged that some of the emails labelled "Tasking" actually contained more than tasking. For example Exhibit #13, an email from DC Hyde to Cst. Opoku directing him to look for video of Mr. Szucs carrying particular bags with photos attached at the West Georgia location, was not clearly irrelevant and so it was disclosed.
- [93] I am satisfied that, with the Crown's involvement in reviewing the emails designated "Tasking" or "Resourcing", any emails that contain more than simple tasking or resourcing are now being disclosed, consistent with the Crown's ongoing Stinchcombe disclosure obligations.

- [94] In my view, neither of these labels move beyond what one would characterize as purely administrative information related to the assignment of tasks and to information relating to measures taken by investigators to organize the investigation and need not be disclosed, save for those that the Crown observes go beyond tasking: McKinnon 2051 at para. 61, citing R. v. Pickton, 2005 BCSC 1240 at para. 44.

V4-Admin Emails

- [95] I was troubled by DC Wu's description of V4-Admin being assigned to emails that she concluded were simply emails forwarding attachments. The difficulty behind the FSOC bulletin and the information contained in the body of the emails when it was disseminated provides a concrete example of how an item of critical significance to Mr. Latimer's defence was not disclosed for many, many months, notwithstanding repeated requests for its disclosure since February 20, 2019.
- [96] Accordingly, it is appropriate to order that all emails withheld as V4-Admin be reviewed, to ensure that the information in the emails truly fits the classification of purely administrative, and does not also encompass emails that have attachments, but also contain information related to investigative steps in the body of the email. The body of the email chains need to be reviewed, to ensure that information that overcomes the clearly irrelevant hurdle is not mistakenly being withheld due to the fact that an email was erroneously labelled V4-Admin simply because it forwarded an attachment.

Superintendent Porteous' Emails

- [97] I was also troubled by the revelation in DC Wu's evidence that only the emails of officers and civilian members on the witness list were obtained as part of the email review. Superintendent Porteous oversaw the investigation and certainly had some involvement in receiving briefings about the state of the investigation. Respectfully, it is folly to assume that his emails would only be administrative in nature and not also potentially contain directions or advice on investigative steps or directions about the steps the investigation might want to take.
- [98] Accordingly, DC Wu is to obtain and review Superintendent Porteous' emails, to ensure that materials and information related to this investigation have not been mistakenly withheld simply because he is retired and not on the witness list.
- [99] As I understood DC Wu's evidence, the IT Department for VPD would be able to assist in this, as they can access Superintendent Porteous' archived sent email boxes and received emails or inbox of the Outlook platform used by VPD.

Reiteration of February 20, 2020 Order

[100] Related to this task is the troubling revelation that DC Wu only sought the emails of those members on the witness list in response to my order of February 20, 2020. I acknowledge her evidence discloses that there are over 400 people on the witness list. However, my order in the Laporte List Ruling at para. 93 was that she:

...communicate with all officers and civilians involved in Projects Territory and Tantrum and request they forward to her immediately any emails and/or electronic communications in which they communicated about any matter or target related to Project Territory or Tantrum.

[Emphasis added.]

[101] It may be that, in the end, individuals on the witness list are the bulk of the officers and civilians involved in the Project Territory and Tantrum investigations. However, the fact that the officer overseeing the investigation was excluded, coupled with the difficulties related to disclosure, the FSOC bulletin, and the emails related to its dissemination, causes me to have lingering concerns that Project Territory and the VPD do not have a robust and informed understanding of their Stinchcombe obligations when it comes to email communications between investigators, officers and civilian members involved in a large project investigation. The circumstances from McKinnon and now this case, in terms of the handling of email communications, cause this lingering concern.

[102] Accordingly, I reiterate my order from February 20, 2020, as contained in para. 93 of the Laporte List Ruling. It applies to all officers and civilian members involved in the Project Territory and Tantrum investigations, not simply those on the witness list.

2. Laporte List Applications

[103] I turn now to the two Laporte list orders sought by Mr. Latimer and Mr. Szucs. Mr. Latimer seeks an order "compelling the Crown to disclose adequate and sufficient information about certain items listed on the email spreadsheets." Mr. Szucs seeks an order "that the email spreadsheets which summarize emails for which disclosure is being withheld provide sufficient detail in order to permit the applicant to determine whether further requests for disclosure or applications are required."

[104] The Crown contends that Mr. Latimer's Laporte list request should be dismissed, because the Crown will continue to voluntarily provide the relief that Mr. Latimer seeks, especially in respect of the Chesson argument, as the particularized disclosure request process is working.

- [105] In so far as Mr. Szucs' Laporte list request is framed, the Crown contends it is not responsive to the state of the prosecution and the timeline the Crown hopes to meet. I understood this to mean, in part, that the request is overly broad or insufficiently particularized and to accede to a blanket request for a Laporte list will unduly delay matters. Instead, the Crown maintains its position that particularized requests for disclosure are the defence obligation in the disclosure dialogue.
- [106] Indeed, a high degree of cooperation and communication between the defence and Crown is critical to enabling the Crown to fulfill its disclosure obligations, especially in complex prosecutions like this one: McKinnon 2051 at para. 93. The courts expect nothing less to move such formidable cases along.
- [107] However, particularized requests for disclosure and the necessary dialogue between the parties cannot occur or function effectively if the defence cannot locate documents and emails described as, for example, duplicates in the withheld email spreadsheets. Nor can disclosure function effectively if defence has to repeatedly go back to the Crown and/or the disclosure officer in an effort to even locate items that are not accessible or locatable, let alone comprehensible from the perspective of conducting an assessment of whether to challenge the withheld information.
- [108] The Crown contends that the decision in *R. v. Pereira*, 2007 BCSC 1533 at para. 58, supports its position that the withheld email spreadsheets are sufficient and that more particularized requests by the defence is the more appropriate way to proceed. In essence, the Crown maintains that it need not provide any more details about the nature of the withheld emails.
- [109] While *Pereira*, quoting from the 1993 Martin Inquiry, notes that a detailed summary of the withheld material is not required, in my view that is not what the defence seeks in this case. Instead, what they seek is some specificity or a modicum of information that assists them in determining whether they need to challenge the withheld emails upon a Stinchcombe review. Emails with general subject lines, no subject lines, subject lines with only "RE" or "FW" in them, or subject lines like "RTIC" that do not reflect what the email actually covers, make it impossible for the defence to even begin to assess whether they might need what has been withheld.
- [110] The exceedingly difficult navigability that the withheld email spreadsheets presents is to some degree exacerbated by the time lag between the February 2020 order and the production of the withheld email spreadsheets for the significant officers in this investigation.

- [111] Exhibit #3, the Disclosure Set Chart, establishes that it was not until disclosure sets V-18 (September 2, 2020) and V-19 (October 5, 2020), that the withheld email spreadsheets for the Part VI affiant (DC Davies), the primary investigator (DC Hyde), and the information analyst (Ms. Irwin), were provided to the defence. The excerpts of some of the spreadsheets were adduced in evidence and they confirm the difficulties that the defence faces in trying to locate where some of the duplicate information might be or what exactly is being withheld.
- [112] As I have made some Stinchcombe disclosure orders earlier in this ruling, I expect that the withheld email spreadsheets will reduce in size. Given the looming pretrial applications and the need to endeavour to keep this matter moving forward, I am directing that the spreadsheets for the remaining withheld emails include a general descriptor of the nature of the subject matter that the withheld emails addresses, in order to permit the defence to make an informed assessment of whether further disclosure requests are necessary or whether a Stinchcombe review challenging the Crown's decision to withhold the emails is necessary.
- [113] I encourage the defence to continue to engage in the particularized disclosure requests that counsel for Craig Latimer has been undertaking and to prioritize the requests according to the order of the applications that are scheduled.
- [114] That concludes my ruling.

"Ker J."

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